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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 127 OF 2015

Mr.Kanti Lal Jain and another … Applicants

Vs.

1. State of Maharashtra
2. Kirti Hemraj Bafna … Respondents

Ms.Shilpi Jain i/b Mr.Kantilal Jain and Mr.Sumit Raghani, Advocate for Applicants.
Mr. Sanjiv A.Sawant, Advocate for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : 27th JULY, 2015

P.C. :

. Ms.Shilpi Jain, learned Counsel for the applicants and Mr. Sanjiv A.Sawant, learned Counsel for respondent No.2 at length.

2. As respondent No.1 -State of Maharashtra is not party to the Suit, the same stands deleted from this Application. Rule. Mr.Sawant waives service for the respondent No.2. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 1 & 2 have challenged the judgment and order dated 14/01/2015 passed by the learned Civil Judge, Senior Division, Palghar below Exhibit 17 in Special Civil Suit No. 55 of 2014. By that order, the learned trial

Judge rejected the application filed by defendants No. 1 & 2 under Section 9A read with Section 151 and Order 7 Rule 11(a) to (d) of C.P.C. for rejection of the plaint.

4. In support of this Application, Ms.Jain submitted that respondent No.2, hereinafter referred to as plaintiff has instituted Suit for specific performance of agreement for sale dated 02/07/2011. In the first place, the said document is a fabricated document. Secondly, the said document is purportedly signed by defendant No.1. Defendant No.2 has not signed the said agreement. The said agreement shows that defendant No.1 has signed on behalf of defendant No.2. No power of attorney is executed by defendant No.2 in favour of defendant No.1. She submitted that clause 1(B) thereof recites that balance consideration of Rs.10 lacs will be paid within one month from the date of the obtaining sale permission from the Competent Authority [i.e. for converting the said land from new tenure to old tenure and after obtaining permission for change in use from bonafide industrial purpose to special township purpose (residential purpose)]. She submitted that in paragraph 5 of the plaint, the plaintiff asserted that defendants agreed to obtain permission from the Competent Authority [i.e. for converting the land from new tenure to old tenure and after obtaining permission for change of use for bonafide industrial purpose or special township purpose (residential purpose)]. She submitted that comparison of

paragraph 5 with clause 1(B) shows that there is a contradiction. She further submitted that clause 1(C) recites that the owner has deposited with the purchasers 7/12 extract and mutation entries available with the vendors. The plaintiff has not annexed 7/12 extract along with the Suit. She further submitted that there is recital in the agreement that entire land was and is new tenure land(Class II) and the said land was purchased by the present owners/vendors from the original owner for bonafide industrial use. The bonafide industrial use of the said land was allowed vide order of the Tahsildar, Palghar. The said order is also not annexed along with the agreement for sale.

5. She submitted that the plaintiff has instituted Suit for specific performance on the basis that defendant No.2 has executed power of attorney in favour of defendant No.1. The plaintiff, however, has not produced power of attorney. Apart from that, the plaintiff has produced photocopy of the agreement of sale only after more than three years from the date of the alleged agreement. The plaint does not disclose cause of action and consequently, is liable to be rejected under Order 7 Rule 11(a) of C.P.C.

6. She further submitted that the plaintiff has not paid requisite court fee and has instituted Suit on undervalued price of Rs. 20 lacs for the suit property which was valued at Rs.5 crores as per Government of Maharashtra ready reckoner price. The plaint is,

therefore, liable to be rejected under Order 7 Rule 11(b) of C.P.C. She further submitted that plaint is also liable to be rejected under Order 7 Rule 11(c) where the plaint is written upon paper insufficiently stamped.

7. Lastly, she submitted that the plaint is also liable to be rejected under Order 7 Rule 11(d) as basically, the defendants have not fulfilled the terms and conditions contended by Section 63-1(A) of the Bombay Tenancy & Agricultural Lands Act, 1948 (for short 'Tenancy Act') and consequently, could not sell the property in dispute in favour of plaintiff. In support of her submissions, she relied upon the decisions of the Apex Court in following cases.

i) Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust, (2012) 8 Supreme Court Cases 706.

ii) Dipak Babaria Vs. State of Gujarat, (2014) 3 Supreme Court Cases 502.

8. On the other hand, Mr.Sawant supported the impugned order. He submitted that the learned trial Judge has considered assertions made in the plaint and held that plaint cannot be rejected under Order 7 Rule 11(a), (b) & (d). As far as ground under Order 7 Rule 11(c) is concerned, the learned trial Judge has observed in paragraph 14 that admittedly, alleged agreement is shown to be on a stamp of Rs.200/-, but no such directions were given to the plaintiff to supply requisite stamp paper, therefore, objection under Order 7

Rule 11(c) cannot be accepted.

9. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In the case of **Church of Christ Charitable Trust** *(supra)*, the Apex Court has observed that in case of Suit for specific performance of agreement of sale of property, where cause of action was based on registered deed of power of attorney, same or registered copy thereof must be produced. The same not having been produced, plaint is liable to be rejected. In the present case, plaintiff has not based his relief of specific performance on the power of attorney executed purportedly by defendant No.2 in favour of defendant No.1. In view thereof, decision in the case of **Church of Christ Charitable Trust** *(supra)* does not advance the case of defendants.

10. On the other hand, in paragraph 13, the Apex Court has observed that it is the duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them given the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act, no cause

of action possibly accrue. In paragraph 14, the Apex Court reproduced paragraph 12 of the *A.B.C. Laminart (P) Ltd Vs. A.P.Agencies* **(1989) 2 SCC 163** wherein it is observed that a cause of action means every fact, which it traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. **It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree**. It has no relation whatever to the defence which may be set up by the defendant.

11. Applying tests to the facts of the present case, th4 plaintiff has specifically asserted that defendants No.1 & 2 agreed to sell suit land to the plaintiff. The plaint cannot be rejected under Order 7 Rule 11(a).

12. The defendants have prayed for rejection of the plaint under Order 7 Rule 11(b) of C.P.C. Perusal of paragraph 4 of the application shows that defendants have merely alleged that plaintiff has instituted Suit by paying the court fee on undervalued price of

Rs.20 lacs for the suit property which is valued at Rs.5 crores as per the Government of Maharashtra ready reckoner. The defendants have not substantiated this plea. On the basis of vague allegations, plaint cannot be rejected under Order 7 Rule 11(b) of C.P.C. While considering application for rejection of plaint under Order 7 Rule 11 only the averments made in the plaint are germane. In my opinion, appropriate course for the defendants is to file application before the trial Court for holding enquiry as contemplated by Section 8 of the Maharashtra Court Fees Act. In view thereof, plaint cannot be rejected under Order 7 Rule 11(b) of C.P.C. As far as rejection of plaint under Order 7 Rule 11(c) is concerned, the learned trial Judge observed in paragraph 14 that Order 7 Rule 11(c) of C.P.C. provides that where the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court fails to do so, in that event, plaint is liable to be rejected. In the present case, no directions were given to the plaintiff to supply requisite stamp paper. I do not find that the learned trial Judge committed any error in holding that plaint cannot be rejected under Order 7 Rule 11(c) of C.P.C.

13. As far as rejection of plaint under Order 7 Rule 11(d) is concerned, Ms.Jain relied upon Section 63-1(A) of the Tenancy Act as also decision of the Apex Court in the case of **Dipak Babaria**

(supra). She submitted that defendants have not fulfilled the conditions laid down under Section 63-1A of the Tenancy Act and consequently, cannot sell suit land to the plaintiff. She also submitted that in fact as defendants have not complied the conditions under Section 63-1A of the Tenancy Act, it will revert to the original owner from whom defendants have purchased.

14. Section 63-1A of the Act reads thus :

> "**63-1A. Transfer to non-agriculturist for bona fide industrial use** : (1) Notwithstanding anything contained in section 63, it shall be lawful for a person to sell land, without permission of the Collector, to any person who is or is not an agriculturist and who intends to convert the same to a bona fide industrial use (or for special township project, as the case may be,)where such land is located within,-
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> (i) the industrial zone of a draft or final regional plan or draft interim or final development plan or draft or final town planning scheme, as the case may be, prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, or the agricultural zone of any of such plans or schemes and the development control regulations or rules framed under such Act or any of such laws permit industrial use or land; or
> (ii) the area where no such plan or scheme as aforesaid exists (or)
> (iii) the area taken over by a private developer for development of a special township project;)
>
> Provided that, where the total extent of such land proposed to be purchased by a person exceeds ten hectares, he shall obtain prior permission of the Development Commissioner (Industries) or any other officer authorised by the State Government in this behalf, who , while granting such permission shall consider the justification or reasonableness of the requirement of the land proposed to be purchased with reference to the nature of the proposed bona fide industrial use of such land;
> [Provided further that, such purchase of land shall be subject to the condition that it shall be put to industrial

use within the specified total period of fifteen years from the date of purchase, failing which the person from whom the land was purchased shall have the right to repurchase such land at the price for which it was originally sold by him;

Provided also that, the purchaser who fails to put the land to bona-fide industrial use within five years from the date of the purchase, and is on the date of coming into force of the Maharashtra Tenancy and Agricultural Lands Laws (Amendment) Act, 2004 (Mah.XXV of 2005) holding such land without having been put to the bona-fide industrial use, shall be permitted to put such land to the bona-fide industrial use within the remaining period from the total period of fifteen years, subject to the condition that,-

(a) In the land purchased under sub-section (1) was held by the seller as the Occupant Class-II, such purchaser land holder shall pay an additional amount equal to 48 per cent of the price for which it was originally purchased and three times of an annual assessment of non-agricultural tax payable under the Maharashtra Land Revenue Code, 1966 (Mah.XLI of 1966) as a non-utilisation tax per year;

(b) If the land purchased under sub-section (1) was held by the seller as Occupant Class-I, such purchaser land holder shall pay an amount equal to three times of an annual assessment of the non-agricultural tax payable under the Maharashtra Land Revenue Code, 1966 (Mah.XLI of 1966) as a non-utilisation tax per year;

Provided also that, the provisions of this sub-section shall not apply to the areas notified as the Eco-sensitive Zone by the Government of India:";]

Provided also that, where the land being sold is owned by a person belonging to the Scheduled Tribe, such sale of land shall be subject to the provisions of sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 and of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

(2) If the land being purchased under sub-section (1) is held by Occupant-Class II, the purchaser shall pay to the Collector, an amount equal to [two per cent, of the purchase price, in case the purchase of land is for bona-fide industrial use and fifty per cent of the purchase price. If the purchase of land is for special township project] within one month of the execution of the sale deed irrespective of the tenure of such land. This payment shall be in lieu of any nazarana or such other charges which may otherwise be payable by such Occupant-Class II by or under the provisions of the Maharashtra Land

Revenue Code, 1966. In addition, the purchaser of such land shall pay the non-agricultural assessment as may be levied by the Collector under sections 67 and 115 of the Maharashtra Land Revenue Code, 1966.

(3) The person purchasing the land under sub-section (1) for conversion thereof for a bona fide industrial use (or for special township project, as the case may be), give intimation of the date, on which the change of user of the land commenced within thirty days from such date, to the Collector.

(4) If the person fails to inform the Collector within the period specified in sub-section (3), he shall be liable to pay in additional to the non-agricultural assessment which may be leviable by or under the provisions of the Maharashtra Land Revenue Code, 1966 such penalty or exceeding twenty times the amount of non-agricultural assessment as the Collector may, subject to the rules, if any, made by the State Government in this behalf, direct.

Explanation -For the purposes of this section ,-

(a) the expression “bona fide industrial use” means the activity of manufacture, preservation of processing of goods, or any handicraft, or industrial business or enterprise, (or the activity of tourism within the areas notified by the State Government as the tourist place or hill station), and shall include construction of industrial buildings used for the manufacturing process or purpose, or power projects and ancillary industrial usage like research and development, godown, canteen office building of the industry concerned, or providing housing accommodation to the workers of the industry concerned, or establishment of an industrial estate including a co-operative industrial estate, service industry, cottage industry gramodyog units or gramodyog vasahats.

(aa) “special township project” means the special township project or projects under the Regulations framed for Development of Special Township by the Government under the provisions of the Maharashtra Regional and Town Planning Act, 1966.

(b) “Scheduled Tribes” means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Schedules Tribes in relation to the State of Maharashtra under Article 342 of the Constitution of India and persons, who belong to the tribes or tribal communities, or parts of, or groups within, tribes or tribal communities specified in Part IX of the Schedule to the Order made under the said Article 342, but who are not resident in the localities specified in that order who nevertheless

> need the protection of this section (and it is hereby declared that they do need such protection) shall, for the purposes of this section be treated in the same manner as members of the Scheduled Tribes."

15. In the case of **Dipak Babaria** (*supra),* the Apex Court considered the provisions of Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and in particular Sections 89 and 89-A thereof. In paragraph 54, it was observed thus :

> 54. Where the purchaser fails to start the industrial activity as stipulated above, Section 89-A (5) requires the Collector to hold an enquiry, wherein he has to give the purchaser an opportunity of being heard. Thereafter, if he confirms such a view, he is expected to pass an order that the land shall vest in the Government which will, however, be done after determining appropriate compensation payable to the purchaser, which has to be done having regard to the price paid by the purchaser. Then the land shall be disposed off by the Government having regard to the use of the land. Thus, the only authority contemplated under the section is the Collector, and the decision is to be taken at his level. It is only in the event of his refusing to give the certificate of purchase for bona fide industrial purpose that an appeal lies to the State Government. Thus, where one wants to purchase agricultural land for industrial purposes, one has to first obtain the permission of the Industries Commissioner. The purchaser has also to inform the Collector about the purchase within 30 days of such purchase, and obtain a certificate that the land is purchased for a bona fide industrial purpose. He has to see to it that the industrial activity starts in three years from the date of such certificate, and the production of goods and services also starts within five years thereof, which period can be extended by the State Government, in an appropriate case. In the event the purchaser fails to commence such industrial activity, the Collector has to make an enquiry, and thereafter pass an appropriate order of resumption of the land on determining the compensation. Thus, the entire authority in this behalf is with the Collector and none other.

16. The provisions of Sections 89-A are somewhat similar to the Section 63-1A of the Act. In view of paragraph 54 of the Apex Court judgment, the Collector has to hold an enquiry. Thus, the plaint cannot be rejected under Order 7 Rule 11(d) of C.P.C. on the ground that Suit is barred in view of Section 63-1A of the Act. The parties will have to lead necessary evidence before the Collector who has to hold enquiry in that regard.

17. In the light of the aforesaid discussion, in my opinion, defendants will have to take appropriate application for holding enquiry under Section 8 of the Maharashtra Court Fees Act. As far as prayer clause (D) of the application Exhibit 17 is concerned, the defendants have prayed for impounding of the agreement of sale on the ground that it is insufficiently stamped and for forwarding the same to the Collector of stamps for recovery of the deficit stamp duty and penalty. The said aspect cannot be gone into while deciding the application under Order 7 Rule 11 of C.P.C. It is brought to my notice that defendants had filed application in that regard which is rejected by the learned trial Judge. It will be open to the defendants, if so advised, to challenge that order. I, therefore, do not find any merit in the Application and the same is rejected reserving liberty to the defendants to take out appropriate applications under Section 8 of the Maharashtra Court Fees Act, if not already filed and decided as indicated hereinabove.

18. In the light of above discussion, Rule is discharged in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)